

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA

Plaintiff,

File No. 1:03-CR-143

v.

HON. ROBERT HOLMES BELL

JOHN M. BIRNIE II,
EMALEE BIRNIE,

Defendants.

MEMORANDUM OPINION AND ORDER REGARDING
THE APPOINTMENT OF COUNSEL

This matter is before the Court on Defendants John M. Birnie II and Emalee Birnie's motion to appoint counsel. (Defs.' Mot. to Appoint Counsel, Docket #134.) On April 16, 2004, a jury found Defendants guilty on all charges. On July 23, 2004, Defendants were each sentenced to 41 months in prison and 3 years of supervised release. Defendants appealed and on September 20, 2006, the Sixth Circuit remanded the case for resentencing in consideration of the United States Supreme Court's decision in *United States v. Booker*, 543 U.S. 220 (2005). On November 13, 2006, Defendant John M. Birnie was resentenced to 30 months in prison and 3 years of supervised release. On November 15, 2006, Defendant Emalee Birnie was resentenced to 30 months in prison and 3 years of supervised release. On June 19, 2007, Defendants filed a notice of appeal and this motion to appoint counsel.

"As a general rule, the district court loses jurisdiction over an action once a party files a notice of appeal, and jurisdiction transfers to the appellate court." *Dixon v. Clem*, No. 06-5060, 2007 WL 1975981, at *13, 2007 U.S. App. LEXIS 16247, at *34 (6th Cir. July 10, 2007) (quoting *Lewis v. Alexander*, 987 F.2d 392, 394 (6th Cir. 1993)); *cf.* FED. R. APP P. 4(b)(5) (setting forth the circumstances under which a district court retains jurisdiction despite the filing of a notice of appeal). As a notice of appeal has been filed and the motion to appoint counsel was not pending prior to the filing of the notice of appeal, the Court does not have jurisdiction to consider Defendants' motion to appoint counsel.

Accordingly,

IT IS HEREBY ORDERED that Defendants John M. Birnie II and Emalee Birnie's motion to appoint counsel (Docket #134) is **DENIED**.

Date: July 19, 2007

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
CHIEF UNITED STATES DISTRICT JUDGE